

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

THOMAS RIOS,

Plaintiff,

v.

OFFICER GRIFFEN, et al.,

Defendants.

Case No. 2:24-cv-01184-APG-BNW

ORDER

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF Nos. 6, 10). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered a screening order on December 13, 2024. (ECF No. 20). The screening order imposed a 90-day stay and the Court entered a subsequent order in which the parties were assigned to mediation by a court-appointed mediator. (ECF Nos. 20, 22). The parties did not settle at mediation. (ECF No. 23). This case will proceed onto the normal litigation track.

Finally, the Court denies without prejudice Plaintiff's motion for release from incarceration. (ECF No. 19). To the extent Plaintiff is asking the Court to alter his confinement, he fails. The Supreme Court has held that a prisoner in state custody cannot use a § 1983 action to challenge "the fact or duration of his confinement," but instead must seek federal habeas corpus relief or the appropriate state relief. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005).

For the foregoing reasons, **IT IS ORDERED** that:

1. Plaintiff's application to proceed *in forma pauperis* (ECF Nos. 6, 10) is **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In

1 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
2 U.S.C. § 1915(b)(2).

3 2. The movant herein is permitted to maintain this action to conclusion without
4 the necessity of prepayment of any additional fees or costs or the giving of security
5 therefor.

6 3. Pursuant to 28 U.S.C. § 1915, the Nevada Department of Corrections will
7 forward payments from the account of **Thomas Rios, 1095769** to the Clerk of the United
8 States District Court, District of Nevada, 20% of the preceding month's deposits (in
9 months that the account exceeds \$10.00) until the full \$350 filing fee has been paid for
10 this action. The Clerk of the Court will send a copy of this order to the Finance Division
11 of the Clerk's Office. The Clerk will send a copy of this order to the attention of **Chief of**
12 **Inmate Services for the Nevada Department of Corrections** at
13 formapauperis@doc.nv.gov.

14 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
15 a copy of Plaintiff's second amended complaint (ECF No. 21) on the Office of the Attorney
16 General of the State of Nevada by adding the Attorney General of the State of Nevada to
17 the docket sheet. This does not indicate acceptance of service.

18 5. Service must be perfected within ninety (90) days from the date of this order
19 pursuant to Fed. R. Civ. P. 4(m).

20 6. Subject to the findings of the screening order (ECF No. 20), within twenty-
21 one (21) days of the date of entry of this order, the Attorney General's Office shall file a
22 notice advising the Court and Plaintiff of: (a) the names of the defendants for whom it
23 accepts service; (b) the names of the defendants for whom it does not accept service,
24 and (c) the names of the defendants for whom it is filing the last-known-address
25 information under seal. As to any of the named defendants for whom the Attorney
26 General's Office cannot accept service, the Office shall file, under seal, but shall not serve
27 the inmate Plaintiff the last known address(es) of those defendant(s) for whom it has such
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1 information. If the last known address of the defendant(s) is a post office box, the Attorney
2 General's Office shall attempt to obtain and provide the last known physical address(es).

3 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
4 shall file a motion identifying the unserved defendant(s), requesting issuance of a
5 summons, and specifying a full name and address for the defendant(s). For the
6 defendant(s) as to which the Attorney General has not provided last-known-address
7 information, Plaintiff shall provide the full name and address for the defendant(s).

8 8. If the Attorney General accepts service of process for any named
9 defendant(s), such defendant(s) shall file and serve an answer or other response to the
10 second amended complaint (ECF No. 21) within sixty (60) days from the date of this order.

11 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
12 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
13 document submitted for consideration by the Court. If Plaintiff electronically files a
14 document with the Court's electronic-filing system, no certificate of service is required.
15 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
16 mails the document to the Court, Plaintiff shall include with the original document
17 submitted for filing a certificate stating the date that a true and correct copy of the
18 document was mailed to the defendants or counsel for the defendants. If counsel has
19 entered a notice of appearance, Plaintiff shall direct service to the individual attorney
20 named in the notice of appearance, at the physical or electronic address stated therein.
21 The Court may disregard any document received by a district judge or magistrate judge
22 which has not been filed with the Clerk, and any document received by a district judge,
23 magistrate judge, or the Clerk which fails to include a certificate showing proper service
24 when required.

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10. This case is no longer stayed.

11. Plaintiff's motion for release from incarceration (ECF No. 19) is denied without prejudice.

DATED THIS 27th day of January 2025.


UNITED STATES MAGISTRATE JUDGE